COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

In the Matter of	)	
Global NAPs, Inc.	)	
Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New England Inc. d/b/a Verizon Massachusetts f/k/a New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts	)	D.T.E. 02-45

DIRECT TESTIMONY
OF KAREN FLEMING ON BEHALF OF
VERIZON MASSACHUSETTS

September 10, 2002

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I. WITNESS BACKGROUND AND OVERVIEW

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Karen Fleming. My business address is 1320 North Court House Road, Arlington, Virginia.

Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?

A. I am employed by Verizon Services Corp. as a Manager - Risk Management. In that position, I am responsible for managing Verizon's bond, crime and fidelity and relocation programs. I also provide training and consultation support for risk management, contracts and contractors' insurance. This includes consultation on facilities-based agreements, including collocation.

Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.

A. I have fifteen years of experience in the telecommunications industry as an employee of Verizon and its predecessor companies. Prior to my employment with Verizon, I was the risk manager for Arlington County, Virginia for five years. Prior to that, I spent a year and a half at The Hartford Insurance Company handling multi-line claims. I received a Bachelor of Science degree at State University of New York. In addition, I received a Chartered Property Casualty Underwriter (CPCU) and an Associate in Risk Management (ARM) designation from the Insurance Institute of America (IIA).

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY.

A. The purpose of my testimony is to address Issue 8 (Insurance Requirements) that Global NAPs Inc. ("GNAPs") identified in its Petition for Arbitration, including the disputed contract language:

Issue No.	Statement of Issue	Disputed Contract Sections Related Issue
Issue 8	"Should the Interconnection Agreement Require GNAPs to Obtain Excess Liability Insurance Coverage Of $10,000,000 and Require GNAPs to Adopt Specified Policy Forms?"	Verizon's Redline GT&C § 21.

Q. PLEASE SUMMARIZE YOUR TESTIMONY.

A. Verizon Massachusetts' ("Verizon") proposed insurance requirements are set forth in § 21 of the Verizon Redline General Terms and Conditions section of the interconnection agreement. Such insurance coverage should include: Commercial General Liability: $2,000,000; Commercial Motor Vehicle Liability Insurance: $2,000,000; Excess Liability Insurance (Umbrella): $10,000,000; Worker's Compensation Insurance: $2,000,000; and All Risk Property Insurance (full replacement cost) for GNAPs' real and personal property located at a collocation site or on Verizon premises, facility, equipment or right-of-way.

A. GNAPs should obtain this coverage prior to having access to Verizon's network and other assets, and should maintain it during the term of the interconnection agreement. In addition: deductibles, self-insured retentions or loss limits must be disclosed to Verizon; GNAPs shall name Verizon as an additional insured; GNAPs shall provide proof of insurance and report changes in insurance periodically; and GNAPs shall require contractors that will have access to Verizon premises or equipment to procure insurance.

II. INSURANCE REQUIREMENTS (ISSUE 8)

Q. WHAT LIABILITY INSURANCE COVERAGE SHOULD GNAPS OBTAIN?

A. Verizon's proposed insurance requirements are set forth in § 21 of the Verizon Redline General Terms and Conditions section of the interconnection agreement. Such insurance coverage should include:

- Commercial General Liability: $2,000,000.
- Commercial Motor Vehicle Liability Insurance: $2,000,000.
- Excess Liability Insurance (Umbrella): $10,000,000.
- Worker's Compensation Insurance as required by law and Employer's Liability Insurance: $2,000,000.
- All Risk Property Insurance (full replacement cost) for GNAPs' real and personal property located at a collocation site or on Verizon premises, facility, equipment or right-of-way.

GNAPs should obtain this coverage prior to having access to Verizon's network and other assets, and should maintain it during the term of the interconnection agreement. In addition,

- Deductibles, self-insured retentions or loss limits must be disclosed to Verizon.

- ?? GNAPs shall name Verizon as an additional insured.
- ?? GNAPs shall provide proof of insurance and report changes in insurance periodically.
- ?? GNAPs shall require contractors that will have access to Verizon premises or equipment to procure insurance.

Q. WHY IS THE LIABILITY INSURANCE COVERAGE YOU DESCRIBE REASONABLE AND NECESSARY?

A. Verizon is required to enter interconnection agreements with competitive local exchange carriers ("CLECs"). The presence of GNAPs' equipment and personnel on Verizon's property that results from interconnection – particularly collocation – puts Verizon's network, personnel, and assets at an increased risk for damage and injury in many ways: (i) the risk of injury to its employees, (ii) the risk of damage or loss of its facilities and network, (iii) the risk of fire or theft, (iv) the risk of security breaches, and (v) possible interference with, or failure of, the network. In light of interconnection requirements and associated increased risk, it is reasonable for Verizon to seek protection of its network, personnel, and other assets in the event a CLEC has insufficient financial resources to pay for the damage or injury it causes. In § 20 of the Verizon Redline General Terms and Conditions section, GNAPs agrees to indemnify Verizon for any damage that GNAPs causes as a result of its gross negligence or intentionally wrongful acts. Verizon's proposed insurance requirements in § 21 provide the financial guarantee to support the promised indemnification. Verizon's recent experience with CLEC bankruptcies reveals that insurance coverage is often the only source of recovery.

Q. DOES VERIZON MAINTAIN INSURANCE?

A. Yes. Verizon maintains an extensive insurance program that is financially sound, protecting both parties should they be liable jointly and severally for the wrongful acts of the other.

Q. IS VERIZON'S PROPOSAL CONSISTENT WITH OBLIGATIONS OF OTHER CARRIERS?

A. Yes. Verizon's proposal is reasonable in light of the risks for which the insurance is procured and consistent with what Verizon requires of other carriers, as set forth in its Massachusetts tariff on file with the Department. *See Verizon's M.D.T.E. Tariff 17, Part E, §§ 2, 2.3.4.*

Q. DOES THE $5 MILLION IN EXCESS LIABILITY INSURANCE CURRENTLY REQUIRED BY TARIFF 17 ADEQUATELY PROTECT VERIZON FROM RISK OF LOSS?

A. No. In many of the other states in which Verizon has an insurance tariff, Verizon's tariffs provide for $10 million in excess liability insurance because that more accurately reflects Verizon's exposure to its employees, network, and equipment at risk. In today's environment, $10 million is a reasonable amount of insurance coverage to request when there are so many human and property resources at risk. Indeed, events such as 9/11 and the Enron and WorldCom bankruptcies have made very clear the possible risks and exposures present in the current political and economic climate, as well as the frequent lack of financial resources of both big and small companies to address those risks.[1] The $10,000,000 amount is more consistent with the exposures present with collocation and should be adopted. In any event, as discussed below, GNAPs proposes to maintain only $1,000,000 in excess liability insurance, an amount far below even the inadequate amount required by Tariff 17.

Q. INCLUDING THE $10 MILLION IN EXCESS LIABILITY INSURANCE, ARE THE INSURANCE AMOUNTS VERIZON SEEKS CONSISTENT WITH FCC INSURANCE REQUIREMENTS?

A. Yes. The FCC has concluded that "LECs are justified in requiring interconnectors to carry a reasonable amount of liability insurance coverage," including automobile insurance, workers' compensation and employer liability insurance.[2] The FCC observed:

> [D]ue to the unique circumstances posed by physical collocation, we find that it is not unreasonable for LECs to require interconnectors to maintain a reasonable amount of general liability and excess liability insurance coverage to protect against occurrences that may potentially arise out of the physical collocation arrangement. We disagree with Teleport's argument that the physical collocation arrangement is the equivalent of adding a few racks of multiplexing equipment and therefore poses no additional risk to a central office. We find that the presence of interconnectors in the LECs' central office adds additional risk to the LECs' property and operations because the LECs do not have control over the interconnectors' equipment or the personnel that operate the equipment. In the absence of such control, we find that it is not unreasonable for LECs to require general liability insurance to protect against property damage to the LECs' equipment, personal injury to the LECs' employees, and losses to the LECs' customers because of service interruptions caused by interconnectors.[3]

[1] The Department has recognized the increased risk to telephone equipment, plant and property in today's environment as evidenced by the Commission opening of a collocation security proceeding in Docket DTE 02-8.

[2] *See, e.g., In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Physical Collocation for Special Access and Switched Transport, Second Report and Order*, FCC Docket No. 93-162, FCC 97-208 rel. June 13, 1997 ¶ 345.

[3] *Id.* at ¶ 345.

Q. WHY AREN'T GNAPS' PROPOSED INSURANCE REQUIREMENTS REASONABLE?

A. GNAPs' amendments to Verizon's proposed § 21 of the Verizon Redline General Terms and Conditions Attachment would eliminate certain types of insurance and substantially lower the insurance amounts. GNAPs' proposal would provide inadequate coverage in light of the risks for which the insurance is procured and should therefore be rejected. General problems with GNAPs' proposals are highlighted below:

§ 21.1.2 GNAPs proposes to delete the reference to vehicle insurance entirely. GNAPs must provide commercial automobile liability insurance to protect Verizon's facilities for GNAPs' vehicles or those of its subcontractors in the performance of the agreement. Excess coverage is necessary for GNAPs' employees operating personal or rental vehicles relating to the performance of the agreement.

§ 21.1.3 GNAPs advocates reducing Verizon's proposed excess liability insurance from not less than $10,000,000 to $1,000,000. A $1,000,000 limit in coverage is unreasonable in light of the amount of potential damage to Verizon's facilities, personnel, and network that could be caused by GNAPs or one of its subcontractors.

§ 21.1.4 An employer's liability limit of $2,000,000, rather than GNAPs' proposed $1,000,000 is standard in the industry and is an area of increased claims activity.

§ 21.1.5 Contrary to GNAPs' recommendation, GNAPs should provide coverage for any real and personal property located on Verizon's premises. It is unfair to put Verizon in a position to potentially be responsible for claims due to loss of GNAPs' real and personal property and that of its employees.

§ 21.3 Based on Verizon's significantly greater exposure to loss, GNAPs' insurance should be primary. In the insurance arena, the additional insured provision is used to appoint one party's insurance as the primary contact and provide for the joint defense of both parties. This avoids insurance company "finger pointing" and potential delays in responding to claims in the event of a loss. If both parties are named, as GNAPs suggests, each cancels out the other's additional insured provision and may jeopardize the insurance's company's response to a claim.

Q. CAN YOU ELABORATE ON WHY GNAPS' PROPOSED REDUCTION OF THE $10,000,000 EXCESS LIABILITY COVERAGE REQUIREMENT IS UNREASONABLE?

A. Yes. In addition to the reasons I discussed above, there are two additional reasons why the Department should reject GNAPs' proposal to limit excess liability coverage to just $1,000,000. First, it simply is inadequate in light of the risk to Verizon's network, personnel, and assets. It is not unusual for *individuals* to have more than $1,000,000 coverage for liabilities associated with their residence and personal autos. Tort judgments in Massachusetts, including costs and legal fees, routinely exceed $1,000,000, making GNAPs' proposal obviously insufficient. Damage to Verizon's network or assets or injury to a Verizon employee resulting from any single occurrence could easily and significantly exceed the limits of GNAPs' proposed coverage.

Second, GNAPs has agreed to provide excess liability coverage of $10,000,000 to other carriers. Specifically, GNAPs has agreed to provide excess liability coverage of $10,000,000 to Pacific Bell Telephone Company in California. Because GNAPs must already procure excess liability insurance coverage of $10,000,000, there is no reason GNAPs should not provide that coverage to Verizon. By agreeing to provide this coverage to one telecommunications carrier, it would not cause GNAPs to incur any additional expense to agree to provide this coverage to Verizon.

Q. EXCLUDING THE EXCESS LIABILITY AMOUNT, ARE THE INSURANCE AMOUNTS GNAPS PROPOSES CONSISTENT WITH VERIZON'S TARIFF 17?

A. No. Tariff 17 requires $2,000,000 in Commercial General Liability Insurance. GNAPs proposes only $1,000,000. Tariff 17 requires $2,000,000 in employer's liability coverage, GNAPs proposes only $1,000.000.

Q. WHY DOES VERIZON SEEK TO BE INCLUDED AS AN "ADDITIONAL INSURED" ON GNAPS' INSURANCE POLICIES?

A. In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead and provides for a defense. This will not ultimately determine which party's insurance policy will provide coverage – that question is tied to the fact-specific analysis of the event giving rise to a loss and a coverage question – but it does avoid having two or more insurance companies point fingers at each other, rather than move to resolving the underlying claims. In addition, if Verizon is listed as an "additional insured" on GNAPs' policies, Verizon will have less difficulty in obtaining recovery when appropriate – *i.e.*, when and if GNAPs commits a wrongful act. Recently, Verizon experienced several CLEC bankruptcies. In these types of cases, the additional insured provision is especially important. Without the provision, Verizon has little or no access to the CLEC's insurance program. As an additional insured, however, Verizon is entitled to the benefits of coverage in the event a bankrupt CLEC caused the loss.

Q. GNAPS COMPLAINS THAT VERIZON'S PROPOSAL DOES NOT REQUIRE VERIZON TO PAY FOR SIMILAR INSURANCE, PROVIDING VERIZON A COMPETITIVE ADVANTAGE BY AVOIDING THE PAYMENT OF INSURANCE PREMIUMS. IS GNAPS' CONCERN REASONABLE?

A. No. As I mentioned, Verizon maintains an extensive insurance program. Moreover, given the differences in the parties' respective networks, Verizon faces a much greater risk than GNAPs. It is appropriate for the parties' agreement to reflect this asymmetrical risk.

Q. CAN YOU PROVIDE AN EXAMPLE TO DEMONSTRATE YOUR ASSERTION THAT THE RISK OF THE RELATIONSHIP IS ASYMMETRICAL?

A. Yes. An ILEC like Verizon typically has a much more extensive network and many more employees than a CLEC, thereby exposing it to much more risk of damage or injury. Damage to Verizon New York, Inc.'s ("Verizon NY") facilities in New York on September 11, 2001, highlights this asymmetry. Verizon NY's estimated property damage at its 140 West Street central office location resulting from the collapse of the World Trade Center exceeded a billion dollars. By contrast, the total property damage suffered by about 200 CLECs – active, inactive, and/or bankrupt, collocated at this location was approximately $1,000,000. In addition, the Verizon companies had some 2,500 employees housed at the 140 West Street facility, while CLECs typically would have no more than one person on site at any given time, for a maximum possible total of 200 employees.

I do not mean to suggest that this example involves the "fault" of any CLEC. It is offered, rather, to demonstrate that in a relationship with interconnecting CLECs – a relationship Verizon is required to enter – Verizon has much more at risk because it has more network facilities and more employees at a particular site.

Q. HAVE ANY OTHER STATE COMMISSIONS RULED ON THIS ARBITRATION ISSUE BETWEEN VERIZON AND GNAPS?

A. Yes. On May 24, 2002, the State of New York Public Service Commission adopted all of Verizon's proposed language on this issue, stating as follows:

> We adopt Verizon's position. The insurance levels proposed by Verizon are reasonable in light of the potential for network damage or tort liability when network interconnection or physical collocation takes place. These are the same levels of insurance required of other CLECs. Under opt-in provisions of interconnection agreements, if the levels are lowered here, any CLEC could take advantage of the lowered levels. Moreover, listing the other party to a contract as an additional insured is common practice to avoid fingerpointing among insurers in the event of a claim. The fact that Verizon has sufficient assets to self-insure within limits does not in itself create a competitive advantage, in light of Verizon's substantial exposure as the network provider.[4]

Furthermore, the Public Utilities Commission of the State of California also adopted key portions of Verizon's proposed language, as discussed above::

> Verizon indicates that the $10 million in excess liability insurance which it proposes in § 21.1.3 is the same amount to which Pacific and GNAPs agreed. Verizon claims that it would be unfair to leave Verizon with only 10% of the excess liability coverage to which Pacific and GNAPs agreed. I agree with Verizon's argument. Verizon's proposed language in § 21.1.3, which provides for $10 million in excess liability insurance, is adopted.

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[4] *Petition of Global NAPs, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with Verizon New York Inc.*, Order Resolving Arbitration Issues, New York Public Service Commission Case No. 02-C-0006 (May 24, 2002) at 18.

> Verizon also states that the symmetrical outcome with respect to the "additional insured" provision at § 21.3 is problematic. In the insurance industry, when two parties have insurance coverage for the same assets or potential losses, the function of the "additional insured" provision is to ensure that one of the insurance companies takes the lead in providing a defense. Because GNAPs' risk is significantly less than Verizon's the FAR [Final Arbitrator's Report] should eliminate the "symmetry" and instead adopt Verizon's proposed § 21.3. Verizon's proposed language in § 21.3 is adopted.[5]

Furthermore, the Public Utilities Commission of Ohio adopted with modification an arbitration panel report dismissing GNAPs' objections to Verizon's insurance proposals.[6] The *Ohio Verizon/GNAPs Arbitration Panel Report*[7] provided:

> The decision that PacBell apparently made in an otherwise unrelated case, to accept those same insurance requirements that Global has proposed here, should have very little, if any, bearing on Verizon's own assessment of the level of insurance that should be considered to offset the increased risk and exposure to loss that Verizon (i.e., not PacBell) will face when the interconnection agreement under consideration in this case is consummated. *On balance, Global has failed to convince the panel that Verizon's proposed insurance requirements are unreasonable, while Verizon's arguments that Global's proposed requirements are inadequate seem the more persuasive. Therefore, the panel recommends that the Commission should adopt Verizon's proposed insurance requirements.*[8]

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[5] *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996*, Final Arbitrator's Report, Public Utilities Commission of the State of California, Application No. 01-12-026, Decision 02-06-076 (May 15, 2002) at 97. The California Commission reaffirmed this Order in its final decision in the Verizon/GNAPs proceeding. *See In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Opinion Adopting Final Arbitrator's Report with Modification, Public Utilities Commission of the State of California, Application No. 01-12-026, Decision 02-06-076 (June 27, 2002) at 36.

[6] *In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Public Utilities Commission of Ohio Case No. 02-876-TP-ARB, Arbitration Award (Sep. 5, 2002) at 11 (adopting arbitration panel's recommendation).

[7] *In the Matter of the Petition of Global NAPs Inc. for Arbitration Pursuant to Section 252(b) Of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc.*, Public Utilities Commission of Ohio Case No. 02-876-TP-ARB, Arbitration Panel Report (July 22, 2002) ("*Ohio Verizon/GNAPs Arbitration Panel Report*").

Q. IS THERE ANYTHING ELSE YOU WISH TO ADD REGARDING THE DECISIONS IN NEW YORK, CALIFORNIA AND OHIO?

A. Yes. When carriers purchase excess liability insurance, the coverage of their insurance program typically applies to the carrier's entire operations. Thus, the fact that GNAPs has been required in New York, California and Ohio, to purchase excess liability coverage in the amount of $10,000,000 means that GNAPs likely already has in place similar coverage applicable to Massachusetts. If it has not yet purchased such insurance, when it does, the incremental cost to GNAPs of applying that insurance to Massachusetts will likely be zero.

Q. DOES THIS CONCLUDE YOUR TESTIMONY?

A. Yes, it does.

[8] *Id*. at 20. In Ohio, GNAPs had argued that because PacBell in California had voluntarily accepted some of GNAPs' insurance proposals, that Verizon should also be so bound.